

In the Matter of _____)
 _____)
 Waiver of Sections 90.1307(c) and (d)) File Number _____
 and Sections 90.1338(a) and (b))
 of the Commission's Rules)

the safe and efficient operation of its electric distribution system. APS' electric transmission and distribution system is heavily automated, and it relies on its 3650-3700 MHz band radio network to seamlessly monitor and control substations, transmission lines, transformers, and breakers. APS must maintain reliable communications to these components in order to maintain and control the balance of power on the grid.

Due to the complexity and importance of APS' 3650-3700 MHz band network to its overall power delivery system, the company has been acutely monitoring the FCC's proceedings to transition 3650-3700 MHz spectrum to the Citizens Broadband Radio Service ("CBRS"). As noted by the Wireless Internet Service Providers Association ("WISPA") and the Utilities Technology Council ("UTC") (collectively, the "WISPA/UTC Petition") in their joint Petition for Waiver filed for a similar extension in November 2018, the 3650-3700 MHz band rulemaking has sown doubt and uncertainty into the process and the development of the SAS and Environmental Sensing Capability ("ESC") has taken a substantial amount of time.² The FCC approved the SAS operated by Amdocs, CommScope, Federated Wireless, Google, and Sony almost a year after the WISPA/UTC Petition was filed, and the initial commercial deployment in the General Authorized Access ("GAA") tier began only a few weeks ago, but is not yet commercially available nationwide.

APS' 3650-3700 MHz band radio network is currently deployed across 59 different facilities consisting of 254 master and remote radios. This band is transitioning and APS' operations in the band must also transition. This will require deploying new equipment, which may include radios, antennas, coaxial cable and feedlines, outdoor enclosures, in addition to

² Wireless Internet Service Providers Association and Utilities Technology Council Petition for Waiver of Sections 90.1307(c) and (d) and Sections 90.1338(a) and (b) of the Commission's Rules, WT Docket No. 18-353 at 4 (filed Nov. 28, 2018) ("WISPA/UTC Petition").

scheduling and completing site visits to each facility, and properly allocating internal resources and manpower to ensure a seamless transition without impacting day-to-day electric utility operations. APS has made great strides in these efforts thus far. It plans to have all the required equipment by the end of this year. Once that equipment is deployed, APS will no longer need its legacy 3.65 GHz licenses. It is the deployment of this new equipment that necessarily takes time. APS expects to have this new equipment in place across its entire network by January 2023.

Discussion

Pursuant to Section 1.925 of the Commission's rules, APS requests a waiver of the Transition Rules to cease operations on its existing 3650-3700 MHz network in Arizona and northern New Mexico. The Commission may grant a request for waiver if:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.³

When the Commission established protection criteria for incumbent 3650-3700 MHz band operators it did so for a five-year period following the adoption of the 2015 Report and Order, or for the remainder of a license term, whichever is longer.⁴ In addition, the Commission's *CBRS Order* permitted licensees whose licenses were scheduled to expire between April 17, 2015 and April 17, 2020 to request a one-time renewal for a license term ending no later than April 17,

³ 47 C.F.R. 1.925(b)(3).

⁴ See *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 4075-4076 (2015) ("*CBRS Order*").

2020.⁵ This means that certain licensees will be permitted to continue operating 3650-3700 MHz band systems for years beyond other licensees, like APS, simply due to the arbitrary fact that one license expiration date differs from another. While the Commission's *CBRS Order* sought to establish a date by which grandfathered licensees would no longer be afforded Incumbent Access status, it instead created a staggered deadline that applies to different licensees differently. The result is clearly inequitable. More than 1,500 legacy 3650-3700 MHz band licenses are scheduled to expire between April 17, 2020 and the end of the transition period on January 8, 2023, while nearly 800 licensees will simply lose their authority to operate based solely on the date of their initial license grant.

As the petitioners noted in the WISPA/UTC Petition, the purpose underlying the Transition Rules is to establish a date by which grandfathered licensees would no longer be afforded *Incumbent Access status*.⁶ Moreover, the Commission believed that at the end of the transition period Grandfathered Wireless Broadband Providers would have the option to apply for Priority Access tier license ("PALs") or to operate on a GAA basis.⁷ In reality, the initial commercial deployment in the GAA tier only just began late last month and the Commission recently (and tentatively) scheduled the CBRS auction to begin on June 25, 2020. It would be extremely burdensome, if not impossible, for a licensee like APS to transition dozens of sites to a GAA service tier prior to its license expiration date because the GAA tier is not yet commercially available on a nationwide basis. It would be *impossible* for APS to transition to PAL a service tier by its April 17, 2020, deadline because the Commission will not auction this spectrum for PAL licensees until months *after* the APS license expiration date.

⁵ See 47 C.F.R. 90.1307(c).

⁶ *WISPA/UTC Petition* at 5 (emphasis added).

⁷ *Id.* at 6, citing *CBRS Order* at 4076.

The WISPA/UTC Petition succinctly noted that a waiver of the Transition Rules was clearly in the public interest by pointing out that some licensees may not have the capital available in a single year's budget to undertake all of the transition activities necessary.⁸ In addition, the petitioners stated that unique and unusual factual circumstances – like the fact that the auction will not occur until *after* some licensees authorizations have expired – means that some licensees would not have sufficient time to transition to PAL spectrum. Numerous commenters have filed comments and *ex parte* letters in support of the petitioners' waiver request.⁹

APS recognizes that the Commission may be hesitant to grant a blanket waiver for all existing licensees of 3650-3700 MHz band spectrum because it would extend certain protection criteria afforded to some grandfathered incumbents. However, APS is not operating its 3650-3700 MHz band network as a grandfathered incumbent eligible for protection criteria and is not requesting anything from the Commission other than simply being permitted to continue operating its registered 3650-3700 MHz band radio system until January 2023.¹⁰ APS' 3650-3700 MHz band operations are secondary to any grandfathered incumbent, and there are no exclusive users operating on 3650-3700 MHz band spectrum because the FCC has yet to conduct an auction of PAL licenses. When the auction eventually occurs and licenses are issued, APS

⁸ *Id.* at 8.

⁹ See Cambium Networks, Ltd. *Ex Parte Letter*, WT Docket No. 18-353 (Filed May 9, 2019); Neptuno Media, Inc. d/b/a Neptuno Networks *Ex Parte Letter*, WT Docket No. 18-353 (Filed Jan. 28, 2019); American Petroleum Institute *Ex Parte Letter*, WT Docket No. 18-353 (Filed Dec. 14, 2018); Comments of Slopeside Internet LLC, WT Docket No. 18-353 (Filed Dec. 11, 2018); Comments of Wisper ISP, Inc., WT Docket No. 18-353 (Filed Dec. 12, 2018); Comments of Apex Internet, WT Docket No. 18-353 (Filed Dec. 12, 2018); Comments of Home Town Network Inc., WT Docket No. 18-353 (Filed Dec. 12, 2018); Comments of Conifer Communications, Inc., WT Docket No. 18-353 (Filed Dec. 12, 2018); Comments of The Community Agency, WT Docket No. 18-353 (Filed Dec. 12, 2018); Comments of Bug Tussel Wireless, LLC, Coleman County telephone Cooperative, Inc., and Hill Country Telephone Cooperative, Inc., WT Docket No. 18-353 (Filed Dec. 12, 2018); and Comments of Atheral LLC, WT Docket No. 18-353 (Filed Dec. 12, 2018).

¹⁰ The vast majority of APS' 3.65 GHz registrations were submitted to the Commission after April 17, 2015 and were therefore ineligible to register for interference protection.

would of course be secondary to those licensees. Therefore, grant of this waiver request would have absolutely no impact on the Commission's efforts to transition the band to CBRS.

Conclusion

Based on the foregoing, APS respectfully requests a waiver of the Transition Rules and an extension through January 8, 2023 to cease operations under its legacy 3.65 GHz license.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Wesley K. Wright", is written over a horizontal line.

Wesley K. Wright
Timothy A. Doughty
Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001
(202) 434-4239 (phone)
(202) 434-4646 (fax)
wright@khlaw.com
doughty@khlaw.com

Attorneys for Arizona Public Service Company

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